IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.561 of 2000

Shanmughavadivel @ Kannan .. Appellant

-vs-

State, by Inspector of Police,
Colachel Police Station,
Kanyakumari District.
(Crime No.195 of 1996). .. Respondent

Appeal against the judgment of the learned Additional Sessions Judge, Kanyakumari District at Nagercoil, made in S.C.No.41 of 1998 dated 14.6.1999.

!For Appellant : Mr.Srinivas

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The accused appeals.

2. The appellant, who, in this judgment, will be referred to as ' the accused', was tried before the learned Additional Sessions Judge, Nagercoil. The allegation against him is that on 25.4.96, he kidnapped Christy Kala, aged about 20 years and committed her murder by administering furidon, a pesticide, after mixing it in a cool drink. The further allegation against the accused is that after committing the murder of Christy Kala, he removed ear studs, M.O.10, silver anklets, M.O.11, valued at Rs.2,250/- and in order to screen the offence of murder, threw the body of Christy Kala into a well belonging to P.W.1, after a stone was tied to the body. The learned trial Judge, finding the accused guilty under Section 364 I.P.C., sentenced him to rigorous imprisonment for a period of three years and also directed him to pay a fine of Rs.1,000/- with a default sentence of six months S.I. and for the offence of murder, he was sentenced to imprisonment for life and was

also directed to pay a fine of Rs.2,500/- with a default sentence of one year S.I. The accused, on being convicted for the offence under Section 379 I.P.C., was sentenced to one year R.I. and to pay a fine of Rs.500/- with a default sentence of two months S.I. and on being convicted under Section 201 I.P.C., he was sentenced to three years R.I. and was also directed to pay a fine of Rs.500/- with a further direction that in default of payment of fine, he will undergo simple imprisonment for a period of six months. The appeal challenges the above convictions and sentences.

3. The case of the prosecution can be briefly summarised as follows:-

P.W.12 is the father of the deceased and P.W.17 is the mother of the deceased. The deceased, during the relevant period, was taking training in a colour lab and the accused was a photographer by profession. The accused and the deceased were moving with each other in friendly terms, which was not to the liking of the parents. P.W.12 advised the accused and the deceased not to move closely with each other. While the matter stood thus, on 25.4.96, the deceased left the house, after informing her father P.W.12 and mother, P.W.17, that she is going to the lab. Thereafter, the deceased was not seen alive by them. The deceased was seen at the bus stand along with the accused by P.W.15 and they were seen talking with each other. The deceased was not seen alive by anyone thereafter. P.W.12, finding the deceased not returning home on the evening of 25.4.96, searched for her at various places. On 27.4.96, he developed some suspicion about the accused and therefore, went to his house; but he did not find the accused in his house. He contacted P.W.13, the friend of the accused, who could not give him any useful detail. In the meantime, on 5.5.96 at about 5.00 p.m., P.W.1, an agriculturist by profession, wanted to irrigate his lands and was pumping out water from the w ell. While he was pumping out, he found the water to be muddy and also felt some foul smell emanating from the said well. He saw a dead body of a woman inside the well. Therefore, he went to the police station at Colachel and gave a complaint to P.W.22. The said complaint of P.W.1 is Ex.P.1. On the basis of the complaint, Ex.P.1, P.W.22 registered a case in Crime No.195 of 1996 under Section 302 I.P.C. against unknown accused. Ex.P.20 is a copy of the printed first information report. The police party arrived at the scene of occurrence and the body was taken out of the well on 6.5.96, but could not be identified by any of the persons, who were present. The investigation was taken up by P.W.26.

4. P.W.26, Inspector of Police, Colachel Police Station, on taking up investigation in the crime, reached the scene of occurrence, after requesting the services of the sniffer dog, photographer and the scientific expert. He prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.30. The inquest was conducted over the body in the presence of panchayatdars and the inquest report is Ex.P.31. As the body was in a highly decomposed stage, a requisition was issued to the doctor to go over to the scene of occurrence for conducting autopsy.

5. On receipt of the requisition, P.W.21, the Civil Assistant Surgeon attached to Government Hospital, Colachel, reached the scene of

occurrence, where he conducted autopsy on the body, which was taken out of the well. He found the following:-
External findings:-
Skin completely peeled off, eyes liquified, mouth opened with 3 upper incisors teeth missing (2Rt, 1Lt).
Internal Examination:-
Head: No fracture skull bones, brain liquified and decomposed.
Neck: Hyoid bone Larpix, Trachea intact.
Thorax: No fracture of ribs, Lungs Rt.200 gms. Lt.150 gms. Cut section decomposed.
Heart: 80 grams, Chambers empty decomposed.
Stomach: Abdomen Empty. C/s showed 20 ml of violet colour fluid.
Intestines: Distended with gas.
Liver: 1000 grams decomposed. Spleen: 80 gms.
Kidneys: each 80 grams decomposed.
Bladder: Empty, decomposed.
Uterus: Decomposed and dissolved.
Spinal Column and pelvis No fracture.
The following visceral and other parts preserved for chemical analysis:-
1. Stomach and contents.
2. Intestine with contents.
3. Sample of Liver.
4. Sample of Kidneys.
5. Saturate soln. of sodium Chloride.
6. Hyoid bone.
7. Skull.
8. Sternum. 9. One Long bone (lt. tibia with joints intact).
A highly decomposed female foetus about 1.5 kg. weight also seen along with the body at the site patharai.

The doctor issued Ex.P.18, the post-mortem certificate and sent the viscera for examination and after the receipt of the report of the viscera, gave his final opinion under Ex.P.19, opining that death was due to poisoning.

6. P.W.26, continuing with his investigation, seized M.O.5, the stone, M.Os.7 and 8, the two ropes, under a mahazar, Ex.P.3, which was attested by P.W.8 and another. He questioned other witnesses and recorded their statements. M.Os.1 to 4 and 20, which were on the dead body, were produced by the constable, who was present at the time of post-mortem. They were seized under Form 95. In the meantime, P.W.12 , the father of the deceased read a news item in a daily newspaper about the removal of a dead body of a woman from a well and that the police is investigating. P.W.12, accompanied by his wife, P.W.17, went to Colachel police station on 7.5.96. They were shown M.Os.1 to 4 as well as M.O.20, the clothes, which were seized from the dead body. On seeing the clothes, P.Ws.12 and 17 informed the investigating officer, P.W.26, that they belong to their daughter. So, P.W.26 fixed the identity of the dead body, which was removed from the well on 6.5.96, as the body of the daughter of P.Ws.12 and 17. He questioned them and recorded their statements. He questioned P.W.13 and others, whose statements were recorded on the same day. On 8.5.96, he questioned witnesses and

recorded their statements. He searched for the accused and arrested him at about 11.30 a.m. on 10.5.96, when he was standing near Azhagiya Mandapam junction. He was questioned in the presence of P.W.16, who is the maternal uncle of the deceased. The accused gave a statement. The admissible portion of the statement is Ex.P.7. It was attested by P.W.16 and another. M.O.21, the silver waist cord, which the accused was wearing, was produced by him and the same was seized under a mahazar, Ex.P.32, attested by the same witnesses. The accused took the police party to his house and produced a diary, Ex.P.8, in which, Ex.P.13, a receipt showing the purchase of furidan, Ex.P.14, a receipt showing the sale of M.Os.9 and 10 as well as Ex.P.15, a receipt indicating the sale of M.O.14, were kept and they were seized under a mahazar, Ex.P.9, attested by P.W.16. After the seizure of these articles from the house of the accused, the police party was taken to a temple, where, on being pointed, M.O.12, chappals, M.O.15, a paper packet containing furidan powder, M.O.16, a glass tumbler, M.O.17, cement slabs, M.O.18, Frooti packet covers, M.O.19, soil with furidan and M.O.22, sample soil were seized under a mahazar, Ex.P.10, attested by P.W.16. The accused, thereafter, took the police party to P.W.19, the owner of a jewellery shop, who produced M.Os.9 and 10, ring and ear studs, which were seized under a mahazar, Ex.P.11 , attested by P.W.16. The police party was taken to the shop of P.W.20, where M.O.11 and 14, on being produced, were seized under a mahazar, Ex.P.12, attested by P.W.16. The officer gave a requisition to the scientific expert to conduct superimposition test on the skull of the dead body, which was taken out from the well by handing over M.O.13, the photograph of the deceased girl. The expert, who conducted superimposition test, was not examined by the prosecution before the trial Court, but only the report, Ex.P.29 was marked through the Court clerk, P.W.23 and it is to the effect that the dead body is the body of the person found in the photograph. P.W.26 continued with his investigation and it was later handed over to P.W.27, who, after verifying the investigation conducted by his predecessor and after examining P.Ws.21 and 24, filed the final report against the accused on 12.12 .96.

7. The accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him. He denied all the incriminating circumstances and stated that he was taken to the police station in the last week of April, 1996, where he was detained and later, remanded to judicial custody for ten days.

8. The cause of death of Christy Kala is not in dispute. The evidence of the doctor, P.W.21, who conducted autopsy and the postmortem certificate, Ex.P.18, and the final opinion, Ex.P.19, show that Christy Kala died on account of consumption of Furidan, a poison.

9. The question that is to be decided by this Court is whether the accused had administered the said poison to the deceased, removed gold articles worn by the deceased and thereafter, threw the dead body into the well as claimed by the prosecution before the trial Court. To establish the said charges before the trial Court, the prosecution relied upon circumstantial evidence. In all cases of circumstantial evidence, it is the settled principle of law that the prosecution should establish all the links in the chain of circumstances and even if one link in the chain of circumstances is missing, then the accused is entitled for acquittal.

10. The first circumstance in the present case is the evidence of P.Ws.12 and 17, the father and mother of the deceased. They have, in their evidence, stated that the deceased was taking training in a colour lab and that the accused, who was a photographer by profession, was friendly towards their daughter and that they have advised the accused not to have any relationship with their daughter. According to P.Ws.12 and 17, the deceased left the house at about 7.00 a.m. on 25 .4.96, after informing them that she is going to the colour lab and that she did not return home in the evening. The evidence of P.Ws.12 and 17, therefore, show that the deceased, who left the house at 7.00 a.m. on 25.4.96, did not return home on that day and was not seen alive by the parents thereafter. According to P.W.12, he went to the house of the accused on 27.4.96, as he grew suspicious about the accused and the accused was not in the house and he, therefore, contacted his friend P.W.13, but could not get any useful information from him. The dead body of a woman, according to the prosecution, was taken out of the well on 6.5.96, after P.W.1 noticed it in his well, while he was pumping water. According to him, while he was pumping water, he found a dead body and therefore, went and gave a complaint to P.W.2 2, the Sub-Inspector of Colachel police station and after the arrival of the police, the body was taken out. According to P.W.26, M.Os.1 to 4 and 20, the clothes, which the deceased was wearing, were recovered and produced before him by the police constable. P.W.12, the father of the deceased, in his evidence, stated that on 7.5.96, on reading a newspaper, he came to know that a dead body of a woman was taken out of the well and that police is investigating. He has further stated that he went to the police station, accompanied by his wife, P. W.17 and at the police station, he was shown M.Os.1 to 4 as well as M.O.20 and from the materials shown to him, he informed the officer that they belong to his daughter and thereafter, the identity of the deceased was fixed by the investigating officer. The evidence of P.Ws.12 , 17 and 26, therefore, show that the dead body, that was removed from the well of P.W.1 on 6.5.96, is the dead body of Christy Kala.

11. It is to be noted at this stage that the investigating officer has admitted in cross-examination that he did not think it necessary to have the dead body photographed and had he taken the photograph of the dead body, the parents of the deceased would have been in a better position to identify the dead body on seeing the photograph. The officer, P.W.26, went on to add by stating that it never occurred to him that the photograph of the dead body is to be taken, when he took up investigation, after the dead body was taken out of the well. We cannot but say that any officer, capable of investigating a crime of murder, on seeing a dead body, whose identity could not be fixed at that time, will immediately have it photographed, so that, at a later point of time, it can be shown to the witnesses, if a situation arises, with a view to fix the identity. In fact, the officer, who is conducting investigation as regards the death of a person, whose body is not identified, will have the dead body photographed and will get it published in all newspapers to enable the relatives or friends of the dead person to go over to the police stati on to give the particulars of the dead person. The investigating officer, P.W.26, was not only not diligent, but was also careless and indifferent and probably he did not realise that he was investigating a serious and grave offence of murder. The conduct of the

police officer in not taking the photograph of the dead body, after it was taken out of the well, is to be deprecated and is to be condemned in strong terms and it is the fervent hope of this Court that in future, the officer will not commit such glaring grave mistakes, so that the prosecution will not suffer. It is also to be observed that the prosecution would have let in better evidence by examining the scientific expert, who conducted superimposition test and who issued Ex.P.29, his report. The prosecuting agency, for reasons best known to it, did not examine the said scientific expert, but chose to mark the said report, Ex.P.29, through P.W.23, the Court clerk. Therefore, this Court cannot but hold that the prosecution has failed to prove the contents of the document, Ex.P.29 and as the contents of the document, E x.P.29, are not proved in terms of the provisions of the Evidence Act, it is to be excluded from the purview of this Court.

12. The prosecution can, of course, prove the contents of certain documents without examining the author of such documents, if they fall under Section 293 Cr.P.C. Section 293 Cr.P.C. states that any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code and further states that the Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of the report. Sub-section 3 of Section 293 Cr.P.C. further contemplates that where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf and the sub-section enumerates the Government scientific experts, to whom the section applies. A perusal of Sub-section 4 of Section 293 Cr.P.C. indicates that the document issued by any Chemical Examiner or Assistant Chemical Examiner to Government, the report of a Chief Inspector of Explosives, the report of the Director of the Finger Print Bureau, the report of the Director, Haffkeine Institute, Bombay, the report of the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the report of the serologist to the Government can be marked, without the concerned person being summoned to the Court. Section 294 Cr.P.C. contemplates that where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document and the list of documents shall be in such form as may be prescribed by the State Government. Sub-section 3 of Section 294 Cr.P.C. contemplates that where the genuineness of any document is not disputed, such documents may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed, provided that the Court may, in its discretion, require such signature to be proved.

13. Section 293 Cr.P.C. does not contemplate that the report

of a scientific expert, who conducts superimposition test, can be marked without examining the scientific expert. If any document is to be marked as evidence under Section 294 Cr.P.C., then the accused must be called upon to admit or deny the genuineness of the said document and the document should be listed in the form as may be prescribed by the State Government. In this case, admittedly, the accused was not called upon in terms of Section 294 Cr.P.C. and the said document was also not listed in the prescribed form. In fact, in G.O.Ms.No.258 (Courts V) dated 8.2.83, the Government of Tamil Nadu has prescribed a form, which is contemplated under Sub-section 2 of Section 294 Cr.P.C. The prosecution, if it wanted to prove the said document under Section 294 Cr.P.C., ought to have marked it, after including it in the list in the form prescribed in the above G.O. It did not do so. Therefore, we exclude Ex.P.29 from our purview. But the said exclusion of Ex.P.29 has not, in our view, affected the prosecution version as regards the identity of the deceased, especially when the accused himself has not disputed the identity of the dead body, which was taken from the well on 6.5.96. Therefore, we hold that the deceased, who left the house on 25.4.96, was not seen alive thereafter by her parents and later, her dead body was taken out of the well on 6.5.96, after the complaint, Ex.P.1, was given by P.W.1 to P.W.22.

14. The next circumstance was brought out through P.W.15 and according to him, the deceased and the accused were seen talking together at Thuckalay bus stand on a date in the month of April. He did not say as to

when he saw the deceased and the accused together at the bus stop. The evidence of P.W.15, therefore, does not conclusively establish that the accused and the deceased were seen together on the morning of 25.4.96.

15. The prosecution case, as we stated earlier, is that death of Christy Kala was caused due to the administration of poison mixed in fruit juice. No witness saw the accused mixing poison in the fruit juice and administering it to the deceased and it sought to establish the said fact by relying upon certain circumstances like the accused not being available in his house on 27.4.96, when P.W.12 went there and the subsequent arrest of the accused by P.W.26 on 10.5.96 leading to the recovery of the material objects, which the deceased, according to the prosecution, was wearing, when she left the house. According to P.W.26, after the identity of the dead body was established on 7.5.96 after the material objects, M.Os.1 to 4, were identified by P. Ws.12 and 17, he continued with his investigation and arrested the accused on 10.5.96 at 11.30 a.m., when he was standing near Azhagiya Mandapam junction. According to him, the accused was questioned in the presence of P.W.16 and he gave a statement, which is Ex.P.7 in this case. The officer has further stated that M.O.21, the silver waist cord, which the accused was wearing, was produced by him and the same was seized under a mahazar, Ex.P.32. According to the prosecution, the said waist cord was purchased from P.W.20 on 3.5.96 under the receipt, Ex.P.15. Though the prosecution had come out with such version, it was not supported by P.W.20. P.W.20, while giving evidence, stated that Ex.P.15 was actually prepared by him at the instance of the police, as the police wanted such a receipt to be prepared. The evidence of P.W.20, therefore, shows that Ex.P.15 was a document prepared by him on the directions issued by P.W.26 and no reliance can be placed upon the said

document. In any event, M.O.21, the waist cord, was not on the person of the deceased, when she left the house.

16. According to the officer, the accused took the police party to his house, where he produced Ex.P.8, a diary, in which, Ex.P.13, the receipt for the purchase of furidan poison, Ex.P.14, the receipt indicating the sale of M.Os.9 and 10 and Ex.P.15, the receipt indicating the sale of M.O.14, were kept and they were seized under a mahazar, Ex.P.9, attested by P.W.16. He has further stated that the accused took the police party to a temple, where M.O.15, a paper packet containing furidan powder, M.O.16, a glass tumbler, M.O.17, cement slabs, M.O.18, fruit juice packets, M.O.19, soil with furidan, and M.O.22, sample soil, were also seized under a mahazar, Ex.P.10, attested by the same witness. The officer went on to state in his evidence that the police party was taken by the accused to P.W.19, the owner of a jewellery shop and P.W.19 produced M.Os.9 and 10, which, according to the officer, were seized under a mahazar, Ex.P.11, attested by P.W.16. We have to now consider whether the evidence of P.W.26 can be accepted that the accused was arrested on 10.5.96 at about 11.30 a.m. and at his instance, the material objects were recovered.

17. On going through the evidence, we find it difficult to accept the evidence of arrest and recovery. P.W.2, a menial attached to Colachel Municipality, in his evidence, stated that when the dead body was taken out of the well, he was also present along with other persons and he found M.O.9 on the dead body. Similarly, P.W.3, working in the same Municipality, who was also present along with P.W.2, stated even in chief that M.Os.10, 11 and 14 were on the dead body and P.W.1 6, the Sanitary Inspector of Colachel Municipality, admitted in cross-examination that M.Os.9, 11 and 14 were found on the dead body, after it was taken out from the well on 6.5.96. P.W.8, the witness to the observation mahazar, Ex.P.2 and Ex.P.3, in cross-examination, admitted that M.Os.9, 10, 11 and 14 were on the dead body, after it was taken out from the well. Therefore, the evidence of P.Ws.2, 3, 6 and 8 indicate that the material objects, M.Os.9, 10, 11 and 14 were on the dead body of Christy Kala, when it was taken out of the well on 6.5.96. It is, therefore, difficult to accept the prosecution version that these articles were recovered after the arrest of the accused on 10.5.96. The prosecution strangely recalled P.Ws.3 and 6 on 10.4.99 and P.W.8 on 16.3.99 and treated them hostile, though they were initially examined in chief and cross-examined in Court on 8.3.99. We are unable to understand as to why the prosecution recalled them at a later stage, examined them and treated them as hostile, especially when it had elicited even in chief-examination of P.W.3 that M.Os.10, 1 1 and 14 were found on the dead body. Though the prosecution treated P.Ws.3, 6 and 8 as hostile long after their examination in chief and cross-examination, P.W.2 was never treated hostile. In view of the above factors, it could be seen that M.Os.9, 10, 11 and 14 were on the dead body, when it was taken out of the well even on 6.5.96 and the subsequent recovery, after the arrest of the accused on 10.5.96, cannot be true.

18. In the above background, we have to consider the evidence of P.Ws.2, 6, 8 and 16. P.W.6, in his cross-examination, admitted that the accused was seen in the police custody on 6.5.96 and along with the accused,

one Sasi was also in the custody of the police. P.W.2, in cross-examination, admitted that Sasi is the son of Sivalinga Achari and that Sasi was brought to the police station, after the sniffer dog went to the house of Sivalinga Achari, which means that after the services of the sniffer dog was summoned on 6.5.96, it went to the house of Sivalinga Achari and his son was brought to the police station on the same day and therefore, the evidence of P.W.6 that the accused was in police custody along with Sasi on 6.5.96 gets strengthened. Though P.W.6 was treated hostile, as we stated earlier, two months after he was examined in chief and cross-examined, he was not even cross-examined or it was not even suggested to him that the accused was not in the police station on 6.5.96 along with Sasi. P.W.8 also admitted in cross-examination that the accused was in the police custody on 6.5.96 and Sasi was also in the police station. P.W.15, similarly, admitted in cross-examination that two days after he saw the accused and the deceased together at the bus stop, the accused was seen in the custody of the police and if it is to be presumed that P.W.15 saw the accused and the deceased together on 25.4.96, for which there is no conclusive evidence, then it must be presumed that the accused was in the police custody even on 27.4.96. P.W.15 was not treated hostile. The evidence of the witnesses, which we have extracted and the defects, which we have pointed out above, indicate that the accused could not have been arrested on 10.5.96 as claimed by the investigating officer, P.W.26. The accused, in his statement recorded under Section 313 Cr.P.C. stated that he was taken to the police station in the last week of April, and later, after ten days, he was sent to Court for remand. The evidence on record, therefore, shows that the arrest and recovery cannot be accepted by this Court and once the arrest and recovery goes, there is no other evidence connecting the accused with the crime.

19. In view of the above factors, we find it difficult to uphold the conviction of the accused, since we cannot but say that the prosecution has miserably failed to establish the links in the chain of circumstances. We, accordingly, acquit the appellant-accused of all the charges, under which he was convicted. The appeal is allowed. It is reported that the appellant-accused is in jail. He is directed to be released forthwith, unless he is required in connection with any other case. The fine amount, if paid by him, will be refunded.

Index: Yes
Website: Yes

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To

1.The Additional Sessions Judge, Kanyakumari District at Nagercoil.
2.-do- Thro' The Principal Sessions Judge, Kanyakumari District at Nagercoil.
3.The District Collector, Kanyakumari.
4.The Director General of Police, Chennai.
5.The Superintendent, Central Prison, Palayamkottai.
6.The Inspector of Police, Colachel Police Station, Kanyakumari District.

7.The Public Prosecutor, High Court, Madras.